

Exhibit 12

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid
In Support of Defendants' Common Opposition to Plaintiffs'
Motion for Partial Summary Judgment**

Washington, DC

Page 631

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MASSACHUSETTS

3 - - - - -x

4 IN RE: PHARMACEUTICAL : MDL NO. 1456

5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

6 PRICE LITIGATION : 01-CV-12257-PBS

7 THIS DOCUMENT RELATES TO :

8 U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris

9 the Florida Keys, Inc. :

10 v. :

11 Abbott Laboratories, Inc., : Chief Magistrate

12 No. 06-CV-11337-PBS : Judge Marianne B.

13 - - - - -x Bowler

14

15 Videotaped deposition of MARK G. DUGGAN, Ph.D.

16 Volume IV

17 Washington, D.C.

18 Tuesday, February 17, 2009

19 9:11 a.m.

20

21

22

1 expect an exact correspondence between the two
2 because one -- in one, the date is the service
3 date. And in the other, the date is the payment
4 date. And so even if both -- one wouldn't expect
5 an exact correspondence, but that's true that --
6 the fact that they are, they do correspond fairly
7 closely, quite closely is -- was something that
8 increases my confidence in both of them.

9 BY MR. TORBORG:

10 Q. Now, in table A, how about for the
11 states with --

12 A. Table 12-A.

13 Q. Yes. Sorry. How about for the states
14 with relatively low Medicaid spending. Is there a
15 close correspondence in that data?

16 A. There are more cases where there are
17 discrepancies, so most strikingly -- at least
18 going in descending order down the table -- would
19 be Mississippi, where -- in which in the -- at the
20 SDU data, looks like about \$940,000. And in the
21 MAX data, about 1.4 million. But if I recall
22 having drilled down on that issue, that reflected

1 the fact that Mississippi was missing SDU data in
2 one of the three years.

3 BY MR. TORBORG:

4 Q. Yes. It says Mississippi, there is only
5 eight quarters there.

6 A. That's correct.

7 Q. Whereas you got 12 quarters in the, in
8 the MAX data which help explain why the MAX data
9 would be higher, right?

10 A. That's correct.

11 Q. And now let's take a look at Colorado,
12 three down. You've got roughly 760,000 in the
13 SDUD data for 11 quarters, right?

14 A. Uh-huh.

15 Q. But then you've got about 1.1 million
16 for 12 quarters in the MAX data, right?

17 A. Correct.

18 Q. There is a higher degree of variability
19 there, right?

20 A. That's correct.

21 Q. And if we look at Maryland, the SDUD
22 data we have the same number of quarters, correct?

1 A. Correct.

2 Q. But the MAX data is 43.6 percent more,
3 right?

4 A. Correct.

5 Q. Similarly for South Carolina, we have
6 the same number of quarters, but the MAX data has
7 39 percent higher expenditures, right?

8 A. Correct.

9 Q. And if we look at Delaware, same number
10 of quarters, that's toward the bottom, same number
11 of quarters, but Delaware's spending is 65 percent
12 higher in the MAX data, right?

13 A. Correct.

14 Q. So would it be fair to say that there is
15 less heterogeneity in the states with lower
16 Medicaid spending, right?

17 MR. LAVINE: Object to form.

18 THE WITNESS: I'm sorry. Could you
19 repeat that? I think you flipped it but -- there
20 is less -- so I don't agree with what you said.
21 Maybe you should --

22 BY MR. TORBORG:

1 Q. Okay. There is more variability --
2 there is not as close a correspondence between the
3 two data sets for the states with relatively low
4 Medicaid spending?

5 MR. LAVINE: Object to form.

6 THE WITNESS: So for -- on average, that
7 is true. But having drilled down on that issue,
8 in many of these cases, it was often driven by
9 incomplete SDU data. So even if it had some
10 utilization, so for example, we talked a bit about
11 Indiana where having drilled down on it, it has
12 the same number of quarters in the two data sets,
13 but there is still this disparity that exists.
14 And having drilled down on it, if I recall, the
15 SDU data was very low in that time period, like
16 for a couple of quarters was peculiarly low.

17 So with the -- so it is typically, you
18 know, there are exceptions, like Tennessee, for
19 example, as you can see. But typically, it is the
20 incomplete SDU data.

21 BY MR. TORBORG:

22 Q. For -- take Colorado, for example. We

1 looked at that one earlier?

2 A. Yes.

3 Q. Are you aware of any facts that the SDUD
4 data is incomplete for that state, but for the one
5 quarter you're missing?

6 A. No. This would be a -- I don't recall.
7 It seems plausible, but I don't recall.

8 Q. Same answer for Maryland?

9 MR. LAVINE: Object to form.

10 THE WITNESS: Correct. I just don't
11 recall. And at some point, if we could take a
12 bathroom break, that would be great.

13 MR. TORBORG: We've got to change the
14 tape anyway, so why don't we take a break.

15 THE VIDEOGRAPHER: The time is 11:26
16 a.m. This completes tape number one.

17 (Recess.)

18 THE VIDEOGRAPHER: The time is 11:41
19 a.m. This begins tape number two.

20 BY MR. TORBORG:

21 Q. Professor Duggan, if you could go to
22 your table 12-B. Keep your hand on page 28, too.

1 A. Yes.

2 Q. This is a table where you compare the
3 amounts paid in the SDUD and SMRF data, this time
4 for the period 1996 through 1998, correct?

5 A. Yes. That's right.

6 Q. And I take it you do that comparison for
7 the same comparison that you -- the same reason
8 that you did the '99 to 2001 comparison, right?

9 A. Correct.

10 Q. And you again note on page 28 of your
11 report that there is a close correspondence in the
12 data for those states with relatively high
13 Medicaid spending, right?

14 A. Right.

15 Q. And then if you look at some of the
16 states toward the bottom of the chart, these would
17 be the states with relatively lower spending,
18 right?

19 A. Correct.

20 Q. And you observed that the correspondence
21 in the data is not as close for the states with
22 relatively low spending, right?

1 MR. LAVINE: Object to form.

2 THE WITNESS: On average, I would say
3 that's true. If we looked at, for example,
4 Montana on down the line, the correspondence there
5 is not as great as above.

6 BY MR. TORBORG:

7 Q. All right. If you look at -- go up
8 above to Mississippi, for example, there is a
9 state where you have 12 quarters of data between
10 both sets, right?

11 A. Correct.

12 Q. Right in the middle.

13 A. Yes.

14 Q. Yet the SMRF data has 27.5 percent more
15 expenditures, right?

16 A. That's correct. And once again, it's
17 this -- my examination of this is typically that
18 it's driven by the incomplete SDU data.

19 Q. And do you -- what makes you think that
20 the SDUD data for, say, Mississippi is incomplete?
21 Have you done an analysis of that?

22 MR. LAVINE: Object to form.